IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.7.2007
CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P.No.13950 of 2007

P.Soundarya ... Petitioner

vs

1. The Chief Commissioner of
Income Tax, Chennai-II
Chennai-34.

2. The Additional Director of
Income Tax (Prosecution),
Chennai-34. ... Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus praying for the relief as stated therein.

For Petitioner : Ms.Jebi Mather Hisham

For Respondent : Mr.Muralikumaran SCGSC (IT)
O R D E R
Writ petition is for a Certiorarified Mandamus calling for the records comprised in the proceedings of the second respondent dated 20.12.2006 as communicated by the first respondent by order dated 1.2.2007 in EOCC No.36/1984 and quash the same and consequently direct the first respondent to consider the representations of the petitioner for compounding or withdrawal of the offences under the IPC in the light of the spirit behind the orders of the Supreme Court dated 9.10.2006 in Criminal M.P.No.10302 of 2006 in Criminal Appeal No.969 of 2000 and the order of this Court dated 21.4.2006 in W.P.No.11191 of 2006 and for further orders.

2. Brief facts leading to the writ petition are as follows:-
The petitioner had filed an application under Section 230-A(1) of the Income Tax Act on 12.5.1983 for issue of a certificate in her favour for settling the property bearing door No.20, First Cross Street, Lake Area, Nungambakkam, Chennai, in the name of her minor son retaining life interest in the said property and declared the sale consideration of the said property at Rs.2,40,000/=. The said declaration was assumed by the I.T. Department to be patently false and has been made to use the same as a genuine evidence in the proceedings before the Income Tax authorities which is a judicial proceedings. The department held that the issue of certificate as required by the petitioner would entitle her to register the settlement deed as if the property was acquired for Rs.2,40,000/= as against the real value of Rs.5,70,000/= and that there would be evasion of Income Tax on the balance sale consideration of Rs.3,30,000/=.
3. In those circumstances, the Income Tax Department filed a complaint against the petitioner punishable under Section 193 of the Income Tax Act r/w. Section 136 of the Income Tax Act r/w. Sections 420 and 511 IPC and also u/s.276-C[1] and 277 of the Income Tax Act. The Economic Offences Court, in EOCC No.36 of 1984 found that the petitioner was guilty, both under the provisions of the Income Tax Act and offences under Indian Penal Code and convicted the petitioner

by its judgment dated 6.11.1989. The judgment of the trial court was also confirmed by the Principal Sessions Judge, City Civil Court, Madras, by judgment dated 19.8.1986 in Criminal Appeal.No.248 of 1989.

4. Aggrieved by the same, the petitioner filed a criminal revision petition in Crl.R.C.No.648 of 1998 and this Court by order dated 3.2.2000 acquitted the petitioner of offences under the Income Tax Act, however, found the petitioner guilty of the offences under Indian Penal Code. The petitioner has moved to the Supreme Court in C.A.No.969 of 2000 and the same is pending disposal.

5. As the petitioner was acquitted of the offences under the Income Tax Act, she made a representation dated 27.1.2006 to the first respondent and sought withdrawing of the prosecution of the offences under Section 420 and 511 IPC, in terms of guidelines of the Central Board of Direct Taxes. Since the representation was pending for a considerable time, the petitioner filed W.P.No.11191 of 2006 and this Court, by order dated 21.4.2006, directed the first respondent to dispose of the petitioner's representation dated 27.1.2006 and her reminder dated 3.4.2006 in terms of the guidelines issued by the first respondent in F.No.285/161/190-I.T.(Inv.) dated 30.9.1984 within a period of eight weeks from the date of receipt of the further representation from the petitioner, strictly in accordance with law and on merits.

6. Pursuant to the above said order, the second respondent, by his order dated 20.6.2006 turned down the request of the petitioner on the following ground:-
"Only when the case is compounded under the Income Tax At, the complaints under the I.P.C. Are withdrawn ..... Since the matter is subjudice and is pending before the Hon'ble Supreme Court, your petition cannot be entertained. You can raise all the contentions before the Supreme Court of India where the S.L.P.is pending against the order of this Madras High Court."

On receipt of the order dated 20.6.2006, the petitioner moved the Supreme Court in M.P.No.10302 of 2006 in Criminal Appeal No.969 of 2000 for appropriate directions. The Supreme Court, taking note of the order dated 20.6.2006, passed an interim order dated 9.10.2006 clarifying that the pendency of Criminal Appeal preferred before the Supreme Court shall not come in the way of the department from considering the petition for compounding or withdrawal of the prosecution in accordance with law.

7. Pursuant to the direction of the Supreme Court, the representation of the petitioner was considered and by order dated 01.02.2007, the first respondent has rejected the request as follows:
"The Department has already rejected your earlier petitioner for compounding of the offences/withdrawal of prosecution. A copy of the latest communication sent to you by Speed Post on 20.12.2006 is enclosed for your ready perusal.
Unless the circumstances, I am of the considered opinion that it will serve no purpose in granting personal hearing to you. You are therefore advised to advance your arguments before the Hon'ble Supreme Court where your appeal is pending."

Aggrieved by the same, the petitioner has filed the present writ petition.

8. Learned counsel for the petitioner submitted that though a personal hearing was sought for, the second respondent has refused to provide sufficient opportunity to place all the materials and therefore, it amounted to violation of natural justice. She further submitted that CBDT guidelines were not considered in proper perspective by the authority while rejecting the request for compounding.

9. In the instant case, while considering the representation of the petitioner on merits, the authority found that under the provisions of the Income Tax Act, compounding is not permissible in cases of IPC offence. The authority who examined the matter afresh has found that it is not a fit case for withdrawal of prosecution under the IPC offences.

10. Section 279 of the Income Tax Act deals with the prosecution of a person, at the instance of Chief Commissioner or Commissioner of Income Tax. As per Section 279(2) of the Income Tax Act, any offence under this Chapter may either before or after initiation of proceedings, be compounded by the Chief Commissioner or Director General. In The Assistant Commissioner (CT)-II v. Velliappa Textiles reported in 2003(ii) SCC 405, the Supreme court held that compounding of offence is not a right of the accused nor is it his unilateral act, it can only be done with the consent of the authorities, viz., the Chief Commissioner or Director General.

11. In Concise Oxford Dictionary in Law, the meaning for the word "compound" is given as: (a) condone a liability or offence in exchange for money etc., (b) forbear from prosecuting (a felony) from private motives, and Law come to terms with a person, for foregoing a claim etc., for an offence. For the expression "Compounding" in Ramanathan Aiyar's Law Lexicon, is "Arranging, Coming to terms, condone for money; arranging with the creditor to his satisfaction. For the expression "compounding felony of offence", the the meaning given is "Compounding an offence is defined to be "the offence of taking a reward for forbearing to prosecute a felony; as where the party robbed takes his goods again or other amends upon an agreement not to prosecute." The meaning deduced from the word "compounding" from the above Dictionaries is "arranging or coming to terms, which means, it is not unilateral act.

12. Whenever a person makes an offer for compounding, he has no right to insist upon bilateral agreement. Even if there is any initiative by the offender, the complainant may not agree for arrangement or settlement of the offence, for which, the prosecution was launched. In case, where the complainant refuses or does not agree for coming to terms, the Court under Article 226 of the Constitution of India issue a Mandamus and compel him to come for settlement. Under such circumstances, it is not necessary to issue notice or provide an opportunity to the offender.

13. In view of the above, I do not see that the reasons stated in the impugned order are contrary to the decision of the Supreme Court or the CBDT guidlines. Hence, this writ petition fails and the same is dismissed. No costs. Consequently, M.P.Nos.1 and 2 of 2007 are also dismissed.

skm 16.7.2007
Note to Office: Issue on 28.02.2008
Index: Yes
To
1. The Chief Commissioner of Income Tax, Chennai-II
Chennai-34.

2. The Additional Director of Income Tax (Prosecution),
Chennai-34.
S. MANIKUMAR, J.
skm

16.07.2007